



ABRAMS GARFINKEL MARGOLIS BERGSON, LLP

1430 Broadway • 17th Floor • New York, NY 10018 • P: 212-201-1170 • F: 212-201-1171 • www.agmblaw.com

Bedbugs/Bedbug Disclosure Law FAQ

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By: Neil Garfinkel

Intro: In the past decade, bedbugs have become a well-publicized nuisance in New York City. As bedbugs are now a serious quality of life issue, “bedbug law” is increasingly important to the residential real estate market. These questions and answers touch upon common bedbug issues that affect real estate brokers.

Question: What is the Bedbug Disclosure Law?

Answer: In 2010, Section 27-2018.1 (Notice of Bedbug Infestation History) was added to the New York City Administrative Code, requiring owners of New York City residential property to disclose bedbug infestation history before an apartment is leased. The legislation requires disclosure of bedbug infestations within the apartment rented by the tenant and the building in which the apartment is located that have occurred in the 12 months preceding the rental. The disclosure must be on a specific form (the “Bedbug Disclosure Form”) available from the Division of Housing & Community Renewal website at: <http://www.nysdhcr.gov/forms/rent/dbbn.pdf>

Question: Does the law apply to co-ops and condos?

Answer: Although the law itself is not clear on this point, it is recommended that the Bedbug Disclosure Form be used in the following scenarios: (i) a landlord leasing an apartment to a new tenant, (ii) a condominium unit owner leasing the unit to a new tenant, (iii) a cooperative apartment owner subletting the apartment to a new tenant or (iv) when a cooperative apartment owner sells the apartment.

Question: Are there any residential real estate transactions in which the Bedbug Disclosure Form is not required?

Answer: The Bedbug Disclosure Form need not be provided during the sale of a condominium unit.

Question: If an owner of an individual condo unit in a building with many units is required to provide the Bedbug Disclosure Form to tenants, how would the owner know whether the building has experienced any infestations beyond her own unit?

Answer: An individual condo unit owner leasing her apartment is required to provide a Bedbug Disclosure Form to the tenant. Since the form addresses infestations in the entire building, the building management should be keeping a record of all bedbug complaints and infestations, to be made available when units are rented out. The owner should obtain this information from the building management in order to complete the form.

Question: Are listing brokers responsible for distributing the Bedbug Disclosure Form?

Answer: There is no provision in the new law which requires real estate licensees (other than managing agents acting on behalf of owners) to assist or complete the Bedbug Disclosure Form. Accordingly, we strongly recommend that if a tenant or landlord requests guidance from a real estate licensee with respect to the completion of a Disclosure Form, the real estate licensee directs the tenant or landlord to his or her own respective attorney. A real estate licensee who offers advice with respect to Section 27-2018.1 could be violating the prohibition on the unauthorized practice of law.

Question: Can building management refuse to provide a Bedbug Disclosure Form until after a prospective tenant has signed a lease?

Answer: A New York City landlord leasing to a new tenant must present a history of bedbug infestation for the premises and the building. The report must be provided “to each tenant signing a vacancy lease” but does not state when this report must be given. One criticism of the law is that it apparently allows the Bedbug Disclosure Form to be provided even after the lease has already been signed.

Question: What is the penalty if a landlord does not provide a Bedbug Disclosure Form?

Answer: Tenants can submit a complaint to the Division of Housing & Community Renewal (DHCR). The DHCR will then formally order the landlord to complete the Bedbug Disclosure Form. Additionally, failure to comply with the disclosure law may allow a landlord to be held liable for the costs associated with a bedbug infestation and potential personal injury claims. To obtain the complaint form, tenants must call 1-866-275-3427 or call/visit one of the DHCR borough offices to request a copy of the form.

Question: Is the building management required to notify all **existing** residents of a bedbug infestation?

Answer: Under the law, there are several situations where a history of bedbug infestation for the premises and the building must be provided. These include a landlord leasing to a new tenant, a cooperative apartment sale or lease, and a condominium lease. Because none of these situations apply to existing residents, the building is not required by law to provide this information to existing residents.

Question: I represent a seller who had bedbugs over a year ago. Do I need to inform potential buyers?

Answer: There is no affirmative duty to disclose this under the standard form contract. However, some attorneys include contract riders which obligate the seller to declare that the property has not had a bedbug infestation for a certain number of years. Additionally, listing agents have a fiduciary duty towards the purchaser to deal honestly, fairly and in good faith, as well as disclose all facts known to the agent that materially affect the value or desirability of the property, except as otherwise provided by law.

Question: My client bought a condo three months ago and discovered bedbugs. What are her rights?

Answer: There is probably no way of knowing if the bedbugs were inside the condo before the sale or only entered afterwards so she probably does not have recourse against the building management or the seller, if the seller represented that there were no bedbugs. Fortunately, many buildings provide bedbug extermination services to residents for free since an untreated bedbug infestation can easily spread throughout an entire building.

Question: Whose responsibility is it to remove a bedbug infestation in a rental apartment?

Answer: Most likely, it is the landlord's responsibility to remove bedbug infestations. Bedbugs have been found to violate the warranty of habitability and may justify rent abatement. Additionally, tenants can report bedbug infestations to the NYC Dept. of Housing, Preservation and Development which can order landlords to address the infestation. If bedbugs persist, the Health Department has the ability to issue orders and conduct hearings leading to fines against building owners.

Question: Whose responsibility is it to remove a bedbug infestation in a condominium?

Answer: Generally, the Board is required to remove an infestation occurring in the common areas, such as the walls, while a unit owner has responsibility if the infestation occurs solely within one unit. So if the bedbugs spread from the common areas, the Board would likely be responsible. If the infestation was caused by the unit owner, he would be responsible. However, in most cases it will be difficult to determine the source of the bedbug infestation. In order to prevent the spread of a building-wide bedbug infestation, it is recommended that the Board encourage prompt reporting of bedbugs and take remedial action at its own expense. If a Board tries to collect the costs of treatment from the tenant, it may be difficult to prove that the tenant caused the bedbug infestation and should therefore cover those costs.

Question: Whose responsibility is it to remove bedbugs in a cooperative apartment?

Answer: Although the shareholder is responsible for the interior of the apartment, if multiple apartments are infested, it may become a Board responsibility. As with condos, in most cases it will be difficult to determine the source of the bedbug infestation and who is therefore responsible. Furthermore, a bedbug infestation in a co-op unit may violate the warranty of habitability, allowing the shareholder to withhold maintenance fees. In any event, to prevent the spread of a bedbug infestation, it is recommended that the Board encourage prompt reporting of bedbug infestations and take remedial action at its own expense.

Question: Can a landlord ask a potential tenant if the apartment they are coming from has bedbugs?

Answer: Yes, but they should ask the same question of everyone.